House of Representatives

General Assembly

File No. 421

January Session, 2015

Substitute House Bill No. 6951

House of Representatives, April 2, 2015

The Committee on Insurance and Real Estate reported through REP. MEGNA of the 97th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE INSURERS REHABILITATION AND LIQUIDATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (a) of section 38a-930 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) (1) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under sections 38a-903 to 38a-961, inclusive, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) Any preference may be avoided by the liquidator if: (A) The insurer was insolvent at the time of the transfer; (B) the transfer was made within four months before the filing of the petition; (C) the creditor receiving it or to be benefited thereby or **[**his**]** <u>such creditor's</u> agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or (D) the creditor receiving it was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not **[**he**]** <u>such employee, attorney or other person</u> held such position, or any shareholder holding directly or indirectly more than five per **[**centum**]** <u>cent</u> of any class of any equity security issued by the insurer, or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property, or if it has been converted, its value from any person who has received or converted the property, except where a bona fide purchaser or lienor has given less than fair equivalent value, **[**he**]** <u>such purchaser or lienor</u> shall have a lien upon the property to the extent of the consideration actually given by **[**him**]** <u>such purchaser or lienor</u>. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

<u>(4) Notwithstanding subdivisions (1) to (3), inclusive, of this subsection, a transfer pursuant to a commutation of a reinsurance agreement that is approved by the commissioner or the commissioner's designated appointee under section 38a-962d shall not be voidable as a preference. For the purposes of this subdivision, a commutation of a reinsurance agreement is the elimination of all present and future obligations between the parties, arising from the</u>

reinsurance agreement, in exchange for a current consideration.

Sec. 2. Subsection (a) of section 38a-944a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) (1) Notwithstanding any provision of sections 38a-903 to 38a-961, inclusive, including any provision permitting the modification of contracts, or other law of a state, and subject to the provisions of subdivision (2) of this subsection, no person shall be stayed or prohibited from exercising: [(1)] (A) A contractual right to terminate, liquidate, accelerate or close out any netting agreement or qualified financial contract with an insurer because of: [(A)] (i) The insolvency, financial condition or default of the insurer at any time, provided that the right is enforceable under applicable law other than sections 38a-903 to 38a-961, inclusive; [,] or [(B)] (ii) the commencement of a formal delinquency proceeding under sections 38a-903 to 38a-961, inclusive; [. (2) Any] (B) any right under a pledge, security, collateral or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract; [. (3) Subject] (C) subject to any provision of subsection (b) of section 38a-932, any right to set off or net out any termination value, payment amount [,] or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract where the counterparty or its guarantor is organized under the laws of the United States or a state or foreign jurisdiction approved by the Securities Valuation Office of the National Association of Insurance Commissioners as eligible for netting.

(2) No person who is a party to a netting agreement or qualified financial contract with an insurer that is the subject of an insolvency proceeding may exercise any contractual right to terminate, liquidate, accelerate or close out the obligations with respect to such agreement or contract because of the insolvency, financial condition or default of the insurer, or by the commencement of a formal delinquency proceeding under sections 38a-903 to 38a-961, inclusive, (A) until five

o'clock p.m., eastern standard time, on the business day following the date of appointment of a receiver, or (B) after such person has received notice that such agreement or contract has been transferred pursuant to the provisions of this section.

Sec. 3. Subsection (b) of section 38a-140 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(b) Whenever it appears to the commissioner that any person has committed a violation of sections 38a-129 to 38a-l40, inclusive, that so impairs the financial condition of a domestic insurance company as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, securityholders or the public, the commissioner may proceed as provided in **[**section 38a-18**]** chapter 704c to take possession of the property of such domestic insurance company and to conduct the business thereof.

Sec. 4. Section 38a-18 of the general statutes is repealed. (*Effective October 1, 2015*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2015*	38a-930(a)
Sec. 2	*October 1, 2015*	38a-944a(a)
Sec. 3	*October 1, 2015*	38a-140(b)
Sec. 4	*October 1, 2015*	Repealer section

INS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes several changes to the Insurers Rehabilitation and Liquidation Act to bring it into compliance with national standards. As these changes concern private insurance requirements, there is no state or municipal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis
sHB 6951

AN ACT CONCERNING THE INSURERS REHABILITATION AND LIQUIDATION ACT.

SUMMARY:

This bill makes changes to the insurance receivership provisions of the Insurers Rehabilitation and Liquidation Act (IRLA).

It requires a stay before a party may exercise termination and other rights in netting agreements and qualified financial contracts (QFC) made with an insolvent insurer, and makes other changes affecting this process. A netting agreement consolidates the value of multiple transactions or contracts under a QFC into a single value. A QFC is a commodity, forward or securities contract; a repurchase or swap agreement; or any similar agreement determined by the insurance commissioner to be a QFC under IRLA.

The bill also:

1. prohibits the liquidator of an insurer from voiding commutation reinsurance agreements approved by the commissioner; and

2. repeals an outdated provision regarding the commissioner's authority to act as a receiver for insolvent and certain other insurers.

It also makes conforming changes.

EFFECTIVE DATE: October 1, 2015

STAY ON TERMINATION OF NETTING AGREEMENTS AND QFCS

Under current law, a party that contracts with an insurer may exercise a contractual right to terminate, liquidate, or close out any netting agreement or QFC due to an insurer's insolvency, financial condition, default, or formal delinquency (i.e., liquidation or rehabilitation proceeding). The bill specifies that the party also has the right to accelerate the agreement or contract.

It also prohibits a party from exercising any such rights:

1. until 5:00 p.m., eastern standard time, on the business day following the date the receiver was appointed, or
2. after he or she receives notice that the agreement or contract has been transferred to another entity under existing procedures allowing the receiver to make these transfers.

COMMUTATION REINSURANCE AGREEMENTS

By law, an insurer in hazardous financial condition or that meets certain other criteria may be placed under the supervision of the insurance commissioner. If the supervised insurer is liquidated, the court-appointed liquidator (e.g., the commissioner) may void certain transfers that unfairly benefit some creditors over others made:

1. within one year of the date of liquidation, or
2. for insurers already subject to a rehabilitation order, within two years of the rehabilitation petition or one year from the liquidation petition, whichever is shorter.

Under the bill, transfers under commutations of reinsurance agreements approved by the commissioner or her designee may not be voided. A commutation of a reinsurance agreement is the elimination of all present and future reinsurance obligations between the parties in exchange for a current consideration. (Reinsurance transfers one party's risk to another.)

REPEALER

The bill repeals an older provision that allows the commissioner to take possession of an insurer in certain situations, including insolvency. By law, this process is also governed by IRLA, which provides more detailed procedures for when and how the commissioner can supervise, rehabilitate, or liquidate an insurance company.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea	19	Nay	0	(03/19/2015)